

AO 120 (Rev. 3/04)

TO:	Mail Stop 8	<b>SOLICITOR</b> OCT 22 2007	<b>REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK</b>
	Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450		

In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been  
filed in the U.S. District Court Middle District of Florida, Tampa on the following ☒ Patents or ☐ Trademarks:

DOCKET NO. 8:07cv1913-T-26TBM	DATE FILED 10/22/2007	U.S. DISTRICT COURT Middle District of Florida - Tampa Division
PLAINTIFF  AER-FLO Canvas Products, Inc.		DEFENDANT  D.C. Humphrys Co.; Cover Sport USA, Inc.
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 0516,360		
2 7,270,617		
3 0552,911		
4 7,160,213		
5 3,862,876		

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY	<input type="checkbox"/> Amendment	<input type="checkbox"/> Answer	<input type="checkbox"/> Cross Bill	<input type="checkbox"/> Other Pleading
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK			
1					
2					
3					
4					
5					

In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT

CLERK  Sheryl L. Loesch	(BY) DEPUTY CLERK  Carrie Ayers	DATE  10-22-2007
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Copy 1—Upon initiation of action, mail this copy to Director    Copy 3—Upon termination of action, mail this copy to Director  
Copy 2—Upon filing document adding patent(s), mail this copy to Director    Copy 4—Case file copy

Infringing Bunt Mesh Product throughout the United States and through its dealers. On information and belief, Defendant HUMPHRYS and Defendant COVER SPORTS provide instructions and/or directions, directly or by inference through its or its affiliates', dealers' or distributors' promotion and advertising (such as in catalogs and on websites), regarding the Infringing Tarp and the manufacture, sale and/or use of the Infringing Bunt Mesh Product.

IV. DEFENDANT HUMPHRYS' AND DEFENDANT COVERSPORTS'  
FALSE MARKING OF THE INFRINGING TARP WITH AN IMPROPER  
PATENT NOTICE

25. On further information and belief, Defendant HUMPHRYS and/or Defendant COVER SPORTS advertised, promoted, marked or otherwise identified the Infringing Tarp as covered by U.S. Patent 3,862,876 ("876 Patent") in their catalogs. On information and belief, advertising copy and product descriptions of Defendant HUMPHRYS' and/or Defendant COVER SPORTS' FIELD SAVER® Heavyweight Cover (which is the Infringing Tarp) include a photograph of the Infringing Tarp with a patent notice, "Patent 3862876." On further information and belief, Defendant HUMPHRYS' and/or Defendant COVER SPORTS' catalogs also display the "U.S. PATENT 3,862,876" notice on their price list directly under the pricing information for the FIELD SAVER® Heavyweight Cover. Note that on the price list, the font size of the Patent Notice is significantly larger than the font size of the prices listed for the products. Notice also that the Patent Notice is prominently positioned as the last text on the page and is centrally located so that a consumer cannot miss it. Copies of relevant pages of Defendant HUMPHRYS' and Defendant COVER SPORTS' catalog are attached hereto as Exhibit E.

26. On information and belief, the '876 Patent was duly and legally issued January 28, 1975 to James E. Graves for the invention "Protective Edge Weighted Cover Cloth." The '876 Patent covers a protective cover cloth having continuous flexible weights secured along at least two opposed edges for securing the cover. On information and belief, the '876 Patent expired on or before January 28, 1992.

27. As explained earlier, Defendant HUMPHRYS and/or Defendant COVER SPORTS did not begin to make, use, offer for sale and sell, directly or indirectly (such as by inducement), the Infringing Tarps throughout the United States and through its dealers until late 2006 or 2007, well after the '876 Patent expired. On further information and belief, the claims of the '876 Patent do not cover the Infringing Tarp.

28. On information and belief, clearly all of Defendants' actions and conduct referred to herein are and were willful and deliberate.

COUNT I  
PATENT INFRINGEMENT OF U.S. UTILITY PATENT 7,270,617

29. AER-FLO re-alleges and incorporates by reference the allegations contained in paragraphs 1 through 28 above.

30. AER-FLO is the sole owner of entire right, title, and interest in and to the '617 Patent.

31. Defendant HUMPHRYS and Defendant COVER SPORTS have infringed, directly or by inducement, the '617 Patent by making, selling (directly or through their dealers or distributors), offering for sale and distributing the Infringing Tarp and practicing the method covered by the '617 Patent without authority or license from AER-FLO.

32. On information and belief, Defendant HUMPHRYS and Defendant COVER SPORTS had actual or constructive notice of AER-FLO's '617 Patent, making Defendant HUMPHRYS' and Defendant COVER SPORTS' actions willful and deliberate. On information and belief, said infringement has been intentionally committed in willful disregard of AER-FLO's rights. On information and belief, Defendant HUMPHRYS and/or Defendant COVER SPORTS hired counsel to monitor and watch the prosecution of the patent application that matured into the '617 Patent after it was published, so they, at all times, knew or should have known of its claims and scope.

33. AER-FLO has been the sole owner of all right, title and interest in and to the '617 Patent and the invention therein since at least the date of issuance of the '617 Patent and has never granted a license or assignment of any of its rights in the '617 Patent or invention therein to any other person or entity. AER-FLO has the right to exclude others from making, using, offering for sale and selling the invention covered by the '617 Patent in the United States.

34. Said infringement has damaged AER-FLO by depriving AER-FLO of sales to which it is rightfully entitled.

35. Defendants directly infringed, actively induced infringement and/or contributorily infringed the '617 Patent with the knowledge of the '617 Patent and such infringement is, therefore, willful. If not enjoined by this Court, Defendants' infringing activity will cause irreparable harm and further damage to AER-FLO.

COUNT II  
PATENT INFRINGEMENT OF U.S. UTILITY PATENT 7,160,213

36. AER-FLO re-alleges and incorporates by reference the allegations contained in paragraphs 1 through 35 above.

37. AER-FLO is the sole owner of entire right, title, and interest in and to the '213 Patent. AER-FLO has the right to exclude others from making, using, offering for sale and selling the invention covered by the '213 Patent in the United States.

38. AER-FLO has placed or caused to be placed the required statutory notice on numerous baseball bunting practice coverings covered by the '213 Patent.

39. Defendant HUMPHRYS and Defendant COVER SPORTS have infringed, directly or by inducement, the '213 Patent by making, selling (directly or through their dealers or distributors), offering for sale and distributing the Infringing Bunt Mesh Product without authority or license from AER-FLO.

40. On information and belief, Defendant HUMPHRYS and Defendant COVER SPORTS had actual or constructive notice of AER-FLO's '213 Patent, making Defendant HUMPHRYS' and Defendant COVER SPORTS' actions willful and deliberate. On information and belief, said infringement has been committed in willful disregard of AER-FLO's rights. Indeed, Defendant HUMPHRYS and/or Defendant COVER SPORTS hired counsel to monitor and watch the prosecution of the patent application that matured into the '213 Patent after it was published, so they, at all times, knew or should have known of its claims and scope.

41. AER-FLO has been the sole owner of all right, title and interest in and to the '213 Patent and the invention therein since at least the date of issuance of the '213

Patent and has never granted a license or assignment of any of its rights in the '213 Patent or invention therein to any other person or entity.

42. Said infringement has damaged AER-FLO by depriving AER-FLO of sales to which it is rightfully entitled.

43. Defendant HUMPHRYS and Defendant COVER SPORTS directly infringed, actively induced infringement and/or contributorily infringed the '213 Patent with the knowledge of the '213 Patent and such infringement is, therefore, willful. If not enjoined by this Court, Defendants' infringing activity will cause irreparable harm and further damage to AER-FLO.

COUNT III  
PATENT INFRINGEMENT OF U.S. DESIGN PATENT D516,360

44. AER-FLO re-alleges and incorporates by reference the allegations contained in paragraphs 1 through 43 above.

45. AER-FLO is the sole owner of entire right, title, and interest in and to the '360 Design Patent.

46. AER-FLO has placed or caused to be placed the required statutory notice on numerous baseball field protectors covered by the '360 Design Patent and constructed under its control.

47. Defendant HUMPHRYS and Defendant COVER SPORTS have infringed, directly or by inducement, the '360 Design Patent by making, selling, offering for sale and distributing the Infringing Tarp without authority or license from AER-FLO. On information and belief, said infringement has been committed in willful disregard of AER-FLO's rights.

48. On information and belief, Defendants had actual or constructive notice of AER-FLO's '360 Design Patent, making Defendants' actions willful and deliberate. On information and belief, said infringement has been committed in willful disregard of AER-FLO's rights.

49. AER-FLO has been the sole owner of all right, title and interest in and to the '360 Design Patent and the invention therein since at least the date of issuance of the '360 Design Patent and has never granted a license or assignment of any of its rights in the '360 Design Patent or invention therein to any other person or entity. AER-FLO has the right to exclude others from making, using, offering for sale and selling the invention in the '360 Design Patent in the United States.

50. Said infringement has damaged AER-FLO by depriving AER-FLO of sales to which it is rightfully entitled.

51. The Defendants directly infringed or actively induced infringement and/or contributorily infringed the '360 Design Patent with the knowledge of the '360 Design Patent and such infringement is, therefore, willful. If not enjoined by this Court, Defendants' infringing activity will cause irreparable harm and further damage to AER-FLO.

COUNT IV  
PATENT INFRINGEMENT OF U.S. DESIGN PATENT D552,911

52. AER-FLO re-alleges and incorporates by reference the allegations contained in paragraphs 1 through 51 above.

53. AER-FLO is the sole owner of entire right, title, and interest in and to the '911 Design Patent.

54. Defendant HUMPHRYS and Defendant COVER SPORTS have infringed, directly or by inducement, the '911 Design Patent by making, selling (directly or through dealers or distributors), offering for sale and distributing the Infringing Tarp without authority or license from AER-FLO.

55. On information and belief, Defendants had constructive notice of AER-FLO's '911 Design Patent, making Defendants' actions willful and deliberate. On information and belief, said infringement has been committed in willful disregard of AER-FLO's rights.

56. AER-FLO has been the sole owner of all right, title and interest in and to the '911 Design Patent and the invention therein since at least the date of issuance of the '911 Design Patent and has never granted a license or assignment of any of its rights in the '911 Design Patent or invention therein to any other person or entity. AER-FLO has the right to exclude others from making, using, offering for sale and selling the invention covered by the '911 Design Patent in the United States.

57. Said infringement has damaged AER-FLO by depriving AER-FLO of sales to which it is rightfully entitled.

58. The Defendants directly infringed or actively induced infringement and/or contributorily infringed the '911 Design Patent with the knowledge of the '911 Design Patent and such infringement is, therefore, willful. If not enjoined by this Court, Defendants' infringing activity will cause irreparable harm and further damage to AER-FLO.



COUNT V  
INDIRECT (INDUCED AND/OR CONTRIBUTORY) INFRINGEMENT OF  
THE '617 PATENT, THE '360 DESIGN PATENT, THE '911 DESIGN  
PATENT AND THE '213 PATENT

59. AER-FLO re-alleges and incorporates by reference the allegations contained in paragraphs 1 through 58 above.

60. On information and belief, Defendant HUMPHRYS' and Defendant COVER SPORTS' sale of the Infringing Tarp and Infringing Bunt Mesh Product to customers and to their dealers and distributors for sale directly or indirectly to customers constitutes direct, indirect (such as by inducement) and/or contributory infringement.

61. Said infringement has damaged AER-FLO by depriving AER-FLO of sales to which it is rightfully entitled.

62. The Defendants directly infringed or actively induced infringement and/or contributorily infringed the '617 Patent, the '360 Design Patent, the '911 Design Patent and the '213 Patent with the knowledge of the patents and such infringement is, therefore, willful. If not enjoined by this Court, Defendants' infringing activity will cause irreparable harm and further damage to AER-FLO.

COUNT VI  
FALSE PATENT MARKING UNDER 35 U.S.C. § 292

63. AER-FLO re-alleges and incorporates by reference the allegations contained in paragraphs 1 through 62 above.

64. On information and belief, Defendant HUMPHRYS and Defendant COVER SPORTS advertised and/or labeled that the Infringing Tarp with a patent notice implying their product was patented by placing the phrase "Patent 3862876" in their advertising of the Infringing Tarp in their catalogs. On further information and belief,

Defendant HUMPHRYS and Defendant COVER SPORTS also advertised that the Infringing Tarp is covered by '876 Patent by boldly marking its pricing guide for the Infringing Tarp with the phrase "U.S. PATENT 3,862,876."

65. On information and belief, Defendant HUMPHRYS' and Defendant COVER SPORTS' advertising of the Infringing Tarp as being covered by the '876 Patent is false because the Infringing Tarp is not covered by the claims of the '876 Patent, and/or the '876 Patent expired on or before January 28, 1992.

66. On information and belief, Defendant HUMPHRYS and Defendant COVER SPORTS had knowledge that the patent had expired and/or that the Infringing Tarp was not covered by the claims of the '876 Patent.

67. On information and belief, Defendant HUMPHRYS and Defendant COVER SPORTS advertised the Infringing Tarp in their catalogs as covered by U.S. Patent 3,862,876 with the intent to deceive the public.

68. Defendants' said acts are willful and deliberate. If not enjoined by this Court, Defendants' activity will cause irreparable harm and further damage to AER-FLO and the public.

#### PRAYER FOR RELIEF

WHEREFORE, AER-FLO prays:

1. As to the '617 Patent, the '360 Design Patent, the '911 Design Patent and the '213 Patent, AER-FLO seeks damages for patent infringement, including pre-judgment and post-judgment interest, and costs and attorneys fees against Defendants pursuant to 35 U.S.C. §§ 284, 285 and any other law that this Court deems appropriate.

2. As to the '617 Patent and the '213 Patent, AER-FLO seeks royalties calculated from the dates of publication from Defendants pursuant to 35 U.S.C. § 154 and any other law that this Court deems appropriate.
3. With respect to the '617 Patent, the '360 Design Patent, the '911 Design Patent and the '213 Patent, AER-FLO further requests at least pursuant to 35 U.S.C. §284 an assessment of treble damages by this Court in view of the willful infringement.
4. With respect to the '617 Patent, the '360 Design Patent, the '911 Design Patent, the '213 Patent and the False Marking count, AER-FLO requests a preliminary and permanent injunction against false marking, continued infringement, inducement of infringement or contributory infringement of the '617 Patent, the '360 Design Patent, the '911 Design Patent and the '213 Patent by either of the Defendants as provided in 35 USC §283 and any other law that this Court deems appropriate.
5. Also as to the False Marking count, assess fines in the amount \$500 per offense pursuant to 35 U.S.C. §292, in which event one-half shall go to AER-FLO and the other to the use of the United States Government and any costs, damages, or attorneys fees that the Court may deem appropriate.
6. That this Court order Defendants, their officers, agents, servants, employees, affiliated companies and attorneys, and all those persons in concert or participation with them to:

IN THE UNITED STATES DISTRICT COURT FOR THE  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

AER-FLO CANVAS PRODUCTS, INC.,  
a Florida Corporation,

Plaintiff,

vs.

D.C. HUMPHRYS CO. dba  
HUMPHRYS TEXTILE PRODUCTS, a  
Pennsylvania Corporation,

and

COVER SPORTS USA, INC., a  
Pennsylvania Corporation,

Defendants,

JUDGE \_\_\_\_\_

Case No. \_\_\_\_\_

Complaint for Patent Infringement,  
Induced and Contributory Infringement,  
False Patent Marking and Demand for  
Jury Trial and Injunctive Relief Sought

Plaintiff, AER-FLO CANVAS PRODUCTS, INC., complaining against Defendants  
D.C. HUMPHRYS CO., dba HUMPHRYS TEXTILE PRODUCTS and COVER SPORTS  
USA, INC:

JURISDICTION AND VENUE

1. This Court has jurisdiction under 28 U.S.C. §1331 and 28 U.S.C. §1338 as  
this dispute involves federal questions under the Patent Statute 35 U.S.C. §101 et seq.

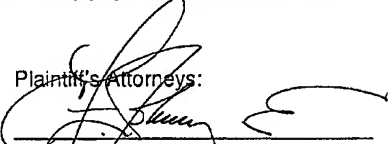
2. Plaintiff, AER-FLO CANVAS PRODUCTS, INC. (hereinafter "AER-FLO" or  
"Plaintiff"), is a corporation incorporated under the laws of the State of Florida and has  
its principal place of business at 4455 18th Street East, Bradenton, FL.

- (a) be preliminarily and permanently enjoined and restrained from directly or indirectly (such as by inducement or contributorily):
  - i. Making, using, selling, offering for sale or otherwise infringing the '617 Patent, the '360 Design Patent, the '911 Design Patent and the '213 Patent, inducing infringement or contributorily infringing the '617 Patent, the '360 Design Patent, the '911 Design Patent and the '213 Patent.
  - ii. Encouraging others to do acts set forth in 6(a)(i).
  - iii. From falsely marking upon or affixing to Defendants' unpatented products the word "patent" or any word or number importing that Defendants' products are patented.
- (b) recall all products that infringe the '617 Patent, the '360 Design Patent, the '911 Design Patent, and/or the '213 Patent;
- (c) cease all advertising of the Infringing Tarp (such as on any website or in any catalog) and recall all copies of catalogs or materials containing advertisements that infringe the '617 Patent, the '360 Design Patent, the '911 Design Patent, and/or the '213 Patent;
- (d) recall all products, advertising and catalogs that are falsely marked with the word "patent," "U.S. PATENT 3,862,876" or any word or number importing that Defendants' products are patented;
- (e) cease all advertising of Defendants' products (such as on any website or in any catalog) that that falsely uses the word "patent,"

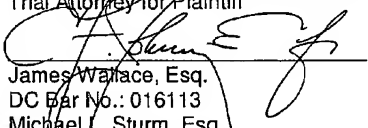
DEMAND FOR JURY TRIAL

AER-FLO hereby demands trial by jury for all issues so triable.

Plaintiff's Attorneys:



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October 19, 2007

3. AER-FLO is engaged in the principal business of designing, manufacturing and distributing various products, including athletic products.

4. On information and belief, Defendant, D.C. HUMPHRYS CO., dba HUMPHRYS TEXTILE PRODUCTS (hereinafter "Defendant HUMPHRYS"), is a corporation incorporated under the laws of the Commonwealth of Pennsylvania and has its principal place of business at 5744 Woodland Ave., Philadelphia, PA 19143. On information and belief, Defendant is not incorporated in and does not have its principal place of business in the State of Florida. On information and belief, Defendant HUMPHRYS is engaged in the principal business of manufacturing (either directly or indirectly), distributing, offering for sale or selling various products, including athletic field covers and other athletic equipment throughout the United States, including Florida and within this judicial district.

5. On information and belief, Defendant, COVER SPORTS USA, INC., (hereinafter "Defendant COVER SPORTS") is a corporation incorporated under the laws of the Commonwealth of Pennsylvania and has its principal place of business at 1241 Carpenter St., Philadelphia, PA 19147. On information and belief, Defendant COVER SPORTS is a wholly owned subsidiary of Defendant HUMPHRYS. On information and belief, Defendant is not incorporated in and does not have its principal place of business in the State of Florida. On information and belief, Defendant COVER SPORTS is engaged in the principal business of manufacturing (either directly or indirectly), distributing, offering for sale or selling athletic field covers and other athletic equipment throughout the United States, including Florida and within this judicial district.

6. Venue is proper in this district under 28 U.S.C. § 1391(b) because the Defendants reside in this district pursuant to 28 U.S.C. § 1391(c) and because the infringing activity giving rise to this claim occurred in this district.

7. Venue is proper in this district pursuant to the Florida Long Arm Statute (Fla. Stat. § 48.193). Under the Florida Long Arm Statute, Defendants are subject to personal jurisdiction in this district at least since they have transacted business in this district or have committed patent infringement in this district.

#### ALLEGATIONS PERTINENT TO ALL CLAIMS

#### I. THE PLAINTIFF, AER-FLO AND ITS PATENTS, TRADEMARKS AND PRODUCTS

8. AER-FLO is engaged in the business of designing, manufacturing and distributing, among other things, athletic field covers and training devices. AER-FLO's President is Mr. William W. Henning.

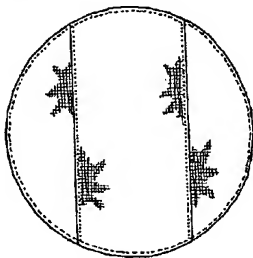
#### A. THE AER-FLO WIND WEIGHTED® PRODUCT AND TRADEMARK

9. AER-FLO designed and developed a unique weighted athletic field cover (hereinafter referred to as the "WIND WEIGHTED® Tarp(s)"). On March 7, 2006, United States Design Patent No. D516,360 ("360 Design Patent") was duly and legally issued by the U.S. Patent and Trademark Office ("USPTO") to AER-FLO for "Baseball Area Protector." A copy of the '360 Design Patent is attached hereto as Exhibit A. All right, title and interest in the '360 Design Patent has at all times been owned by AER-FLO.

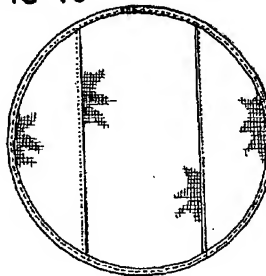


The '360 Design Patent covers, among other things, a design of a baseball area protector, including the following:

**FIG-8**



**FIG-10**

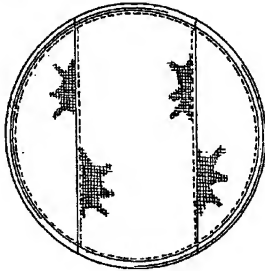


10. On September 18, 2007, United States Utility Patent No. 7,270,617 ("617 Patent") was duly and legally issued by the USPTO to AER-FLO for "A Method for Protecting at Least One Baseball Area of a Baseball Playing Field." A copy of the '617 Patent is attached hereto as Exhibit B. All right, title and interest in said invention and the related '617 Patent has at all times been owned by AER-FLO. The '647 Patent covers a method for protecting a least one area of a baseball area of a baseball playing field.

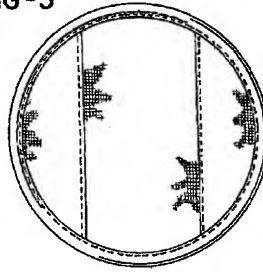
11. On October 16, 2007, United States Design Patent No. D552,911 ("911 Design Patent") was duly and legally issued by the USPTO to AER-FLO for the invention entitled "Protector." A copy of the '911 Design Patent is attached hereto as Exhibit C. All right, title and interest in said invention and the related '911 Design Patent has at all times been owned by AER-FLO.

The '911 Design Patent covers, among other things, a design of a protector, including the following:

**FIG-1**



**FIG-3**



12. AER-FLO markets the WIND WEIGHTED<sup>®</sup> Tarps under the trademark, WIND WEIGHTED<sup>®</sup>.

B. THE AER-FLO BUNT ZONE<sup>™</sup> PRODUCT AND TRADEMARK

13. AER-FLO also designed and developed a system and method that facilitates practicing and training batters to bunt a baseball (hereinafter referred to as the "BUNT ZONE<sup>™</sup> Trainer"). On January 9, 2007, United States Utility Patent No. 7,160,213 ("213 Patent") was duly and legally issued by the USPTO to AER-FLO for "BASEBALL BATTER TRAINING METHOD." A copy of the '213 Patent is attached hereto as Exhibit D. All right, title and interest in said invention and the related '213 Patent has at all times been owned by AER-FLO. The '213 Patent covers a method for training a batter to bunt a baseball.

14. AER-FLO markets the BUNT ZONE<sup>™</sup> Trainer under the trademark, BUNT ZONE<sup>™</sup>.

C. THE AER-FLO INSTALLER™ PRODUCT AND TRADEMARK

15. AER-FLO also markets a device for storing and deploying the WIND WEIGHTED® Tarps under the trademark, INSTALLER™ (hereinafter referred to as "INSTALLER™ Device(s)" or "INSTALLER™ Device for the WIND WEIGHTED® Tarp(s)").

16. The '617 Patent also has claims directed to the INSTALLER™ Device and its use.

17. AER-FLO distributes its products, including the WIND WEIGHTED® Tarp, BUNT ZONE™ Trainer and the INSTALLER™ Device, directly and through dealers and/or distributors.

II. THE DEFENDANTS

18. On information and belief, Defendant HUMPHRYS is engaged in the business of manufacture, distribution and sale of flags, tarps and athletic field covers. Defendant COVER SPORTS, on information and belief, is a wholly owned subsidiary of Defendant HUMPHRYS and is also engaged in the business of the manufacture, distribution and sale of athletic covers, tarps and the like. On further information and belief, Defendant HUMPHRYS and Defendant COVER SPORTS have a common President, namely Mr. Ronald B. Nissenbaum (hereinafter "Mr. Nissenbaum"). On information and belief, Defendant HUMPHRYS and Defendant COVER SPORTS distribute their products directly to customers and through distributors and dealers.

III. DEFENDANT HUMPHRYS AND DEFENDANT COVER SPORTS  
COMMUNICATIONS WITH AER-FLO AND KNOWLEDGE OF AER-  
FLO'S PRODUCTS AND PATENTS

19. On August 21, 2006, Mr. Nissenbaum, President of Defendant HUMPHRYS and Defendant COVER SPORTS, wrote a letter to AER-FLO, in which he, on behalf of his company, acknowledged AER-FLO's design patents and pending utility applications for the WIND WEIGHTED® Tarps and BUNT ZONE™ Trainer and disclosed and provided his counsel's opinions thereof.

20. Mr. Nissenbaum also commended AER-FLO on its unique products, stating:

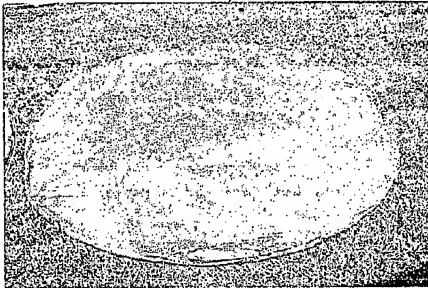
**"We certainly are aware of your new products in the athletic marketplace and commend you on innovative design and ideas."**

21. The letter stated that AER-FLO's products had attracted the attention of Defendant HUMPHRYS' and Defendant COVER SPORTS' distributors. Mr. Nissenbaum announced his companies' intention to supply competitive products.

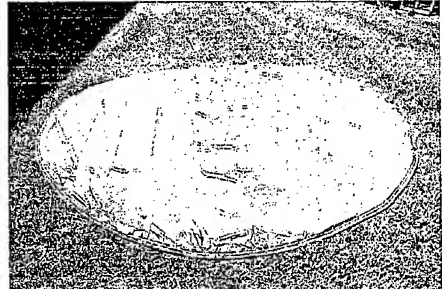
22. On further information and belief, under the direction of Mr. Nissenbaum, Defendant HUMPHRYS and Defendant COVER SPORTS have made, sold, contributed to and/or induced others to manufacture, use, sell and/or offer for sale a weighted infield tarp (hereinafter "Infringing Tarp") that it identifies as the "FIELDSAVER® Heavyweight Cover." The Infringing Tarp is virtually identical to the WIND WEIGHTED® Tarps protected by the '360 Design Patent and the '911 Design Patent. Defendant HUMPHRYS and Defendant COVER SPORTS directly or indirectly, such as by inducement, practices or induces the practice of the method for protecting at least one area of a baseball area of a baseball playing field that is covered by the '617 Patent.

On information and belief, Defendant HUMPHRYS and Defendant COVER SPORTS provide instructions and/or directions, directly or by inference through its or its affiliates', dealers' or distributors' promotion and advertising (such as in catalogs and on websites), regarding the manufacture, sale and/or use of the Infringing Tarp. Please note the similarities in the following side-by-side comparison:

AER-FLO's Patented WIND WEIGHTED®  
Tarp



Infringing Tarp



23. Defendant HUMPHRYS and Defendant COVER SPORTS also made, sold, contributed to and/or induced others to manufacture, use, sell and/or offer for sale a "Bunt Mesh" product (hereinafter "Infringing Bunt Mesh Product") that infringes the method of training as covered by one or more claims of the '213 Patent. On information and belief, Defendant HUMPHRYS and Defendant COVER SPORTS provide instructions and/or directions, directly or by inference through its or its affiliates', dealers' or distributors' promotion and advertising (such as in catalogs and on websites), regarding the manufacture, sale and/or use of the Infringing Bunt Mesh Product.

24. On information and belief, in late 2006 or 2007, Defendant HUMPHRYS and/or Defendant COVER SPORTS began and are continuing to make, use, offer for sale and sell, directly or indirectly (such as by inducement), its Infringing Tarps and